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SUBJECT: CALDERON SIGNS NARCOMENUDEO LAW

REF: MEXICO 1278

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11. (SBU) Summary: On August 20 President Calderon signed into law a reform that decriminalizes small scale possession of drugs for the purpose of consumption, shifts the responsibility for prosecuting small scale dealers to state authorities, increases the penalties for small scale dealers, and mandates the Health Ministry to develop a national program for the prevention and treatment of drug abuse. The new law, which President Calderon left unsigned for four months following its approval by both chambers of the Mexican Congress, represents an attempt by the GoM to establish a legal distinction between users and traffickers which the GoM believes is essential for cracking down on drug dealers. Critics of the law are concerned that prosecutors and health officials will not receive the resources they need to prosecute effectively small time drug traffickers and attend to the health problems of addicts. End Summary.

The Ins and Outs of the Law

12. (U) Trafficking in any type of drug, regardless of the amount, will remain a crime punishable by up to 25 years in jail. However, whereas federal authorities assumed the lead on any and all cases involving drugs in the past, the new law assigns state authorities the lead for dealing with consumers and traffickers in quantities less than one thousand times the established threshold limits, unless the activity is considered subject to federal organized crime law. The law also establishes a middle ground of "shared jurisdiction" where either state or federal authorities can prosecute cases. The Attorney General's Office (PGR) argues that the distinction between consumers and traffickers will enable consumers to get the treatment they need without being subject to extortion by law enforcement officials. Equally important, PGR maintains the law should facilitate more effective investigation of drug traffickers by encouraging greater exchange of information amongst authorities and giving local and state officials the kind of lead they need on investigations on crimes occurring in their jurisdictions.

13. (U) Reftel speaks to legal definitions the law establishes for consumers and drug traffickers. Individuals apprehended in possession of certain drugs in quantities smaller than those established as the threshold limit for the purposes of consumption but who do not demonstrate "symptoms of dependency" are considered consumers. Once a prosecutor

confirms this finding, he/she will send a file on the consumer to the proper health authority. Only upon being registered in possession of this amount on a third occasion will a consumer be required to obtain drug treatment.

Implementation Challenges

¶4. (SBU) Emilio Pea, Director General of Human Rights for the PGR under former President Vicente Fox, conveyed several concerns with the new law. While he appreciated the need to give local authorities a greater lead on small scale drug dealing in their states, he worried that local police lack the proper training, weapons and intelligence mechanisms to implement and enforce the law effectively. Pea flagged a stipulation in the law that suggests traffickers will only face prosecution if found in possession of "pure" vs "tainted" quantities of certain drugs and wondered if this could impede the prosecution of traffickers. Thirdly, Pena criticized the law for being vague on the question of what defined "symptoms of dependency" complicating efforts to determine when consumers suffered an addiction.

Potency Matters

¶5. (U) Other experts fault the law for failing to make a distinction between the effects of different drugs. For example, while it recognizes that marijuana is a mild hallucinogen and is commonly prescribed to address a variety of medical conditions, the law does not acknowledge differences for example with methamphetamines, a much more powerful stimulant that can make the user psychotic and even violent at low doses. These experts believe the law did not sufficiently take these kinds of distinctions into account.

The Human Rights Perspective

¶6. (U) Mexican human rights NGO CenterProdh signaled its

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support for the new law insofar as it keeps non-grave offenders out of jails. CenterProdh favors a more holistic approach to dealing with challenges posed by illegal drugs that focuses on drug offender treatment and rehabilitation. It views jails in Mexico, in large measure, as breeding grounds for criminal activity. As such, it worries that incarcerating minor offenders may only aggravate Mexico's crime problems. Of course, a number of organizations questioned whether the GOM would make available the resources needed to provide drug abusers with the treatment they need.

Squaring the Law with Drug Courts

¶7. (U) Eduardo Medina Mora, the Mexican Attorney General (PGR), announced the opening of Mexico's first Drug Court in the northern state of Nuevo Leon in September 2009. However, it is unclear at this point whether or not first and second time offenders who commit crimes and are found possessing drugs below the threshold quantity will be subject to drug courts and mandatory treatment. Mexican authorities hope the drug courts will help break the cycle of addiction and crime by mandating treatment for offenders. The narcomenudeo law will complicate the task by not requiring first and second time offenders to seek treatment. Statistically speaking, the chance of catching the same offender a third time is probably not high.

Comment

¶8. (SBU) With the adoption of this legislation, the Calderon administration attempts to project a more holistic approach to tackling the drug problems facing Mexico. In the course of its first three years, interdiction initiatives took center stage while prevention and treatment took a back seat. This reform represents the administration's first significant effort to address prevention, treatment, and rehabilitation. Many see merit in assigning the states greater authority for dealing with these issues and distinguishing between dealers and users. Others, however, worry a lack of resources will limit what authorities will be able to accomplish in terms of both health facilities for addicts and the investigation of traffickers. It is too

early to predict what contribution this law will make to Mexico's efforts to combat illegal drugs, but in view of the implementation challenges, some fear the decriminalization of drugs will prove its ultimate legacy. Commentators offered mixed reviews on this bill when the Congress passed it last April with some conveying concern over the potential societal impact of decriminalizing drug consumption and others lauding the legislation as a welcome tool for focusing greater energy on fighting drug dealers in local communities. Commentary this time around has been restrained thus far as many appear inclined to take a wait and see approach regarding its potential impact.

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